QUESTIONS AND ANSWERS
As of May 7, 2012

BELOW ARE QUESTIONS AND ANSWERS RELATED TO THE REQUEST FOR PROPOSAL FOR PRE-QUALIFIED LEGAL COUNSEL

Q1. If a firm is applying to more than one practice area under "Scope of Services," would it be possible to extend the 12 page limit?

A1: While brevity is strongly encouraged, in the event that a firm is applying to multiple practice areas and may require more than the 12 page limitation to effectively respond, ESD will accept up to no more than 25 pages under Tab 1.

Q2. Assuming that multiple firms pre-qualify to provide the same scope of service, what will be the determining factor in selecting a particular firm to provide that service? Would geography, for example, be a factor?

A2: There is not a single determining factor. Some of the factors ESD will consider when selecting a firm are: geography, specific area of expertise, the number of transactions the firm is currently engaged in with ESD or its affiliates/subsidiaries, demonstrated experience in development projects similar to those in which ESD engages, agreement to work within ESD's limitation on hourly fees, potential conflicts of interest and approaches to achieving applicable MWBE participation goals.

Q3. During the 3-4 year effective term of the pre-qualified list, does ESD anticipate increasing the maximum reimbursement rates in each subsequent year?

A3: The current maximum reimbursement rates are as set forth in the Schedule A. While there is no current intention to change the rates, as stated in the RFP, they are subject to change from time to time by action of the board of directors.

Q4. Are out of pocket expenses, such as title searches and mileage reimbursable under the Standard Retainer Agreement?

A4: Out-of-pocket expenses, including title searches and mileage, are reimbursable with certain exceptions. Please see Article VI: Billing Policy and Attachment 6: Schedule of Maximum Allowances for the Corporation's Legal Retainer Agreements in Schedule A for further information.

Q5. If possible, please provide a list of the firms that are currently on ESD's pre-qualified counsel list.

A5: Please see the attached PDF for the current list of pre-qualified legal counsel.

Q6. Does the document in Schedule A entitled "Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement" need to be completed and included in the response? If yes, in which tab should it be included?

A6: Yes this document should be completed and included in Tab 3.

Q7. Will this list be merely a panel in which members may be selected for legal work? Or will this list be a "go to" list whereby most of the law firms on the list will be utilized by the State?

A7: This is not a State solicitation. This is a solicitation on behalf of the New York State Urban Development Corporation d/b/a Empire State Development, a public benefit corporation, and its subsidiaries and affiliated entities ("ESD"). As explained in the RFP, the pre-qualified list is a list of counsel eligible to represent ESD from time to time, as the need may arise, at pre-set maximum hourly rates. Inclusion on the pre-qualified counsel list does not mean or imply that any firm will in fact be selected or engaged to provide legal services to ESD. Such selection and engagement will take place only when a need for outside counsel arises. The purpose of the pre-qualified list is to procure counsel for engagement on short notice.

Q8. Can you provide a list of the firms that were previously on this list; and a copy of their retainer letter?

A8: Please see the response to Question 5. The form retainer agreement was provided as an attachment to the RFP and can be found on our website at: http://esd.ny.gov/CorporateInformation/RFPs.html.

Q9. How many law firms will generally be approved; and how many law firms generally will apply or have applied in the past?

A9: The number of law firms selected for this solicitation cannot be determined at this time, but will be based on the quantity and quality of the submissions. Approximately 70 firms have responded to legal solicitations since 2008. Please see the list of current pre-qualified counsel in the answer to question 5.

Q10. Will the State aid smaller minority firms to group up or is that the sole responsibility of the minority firms themselves? Is size of the firm or the size of the minority collaboration a factor? Will the State aid smaller minority firm in grouping up with other majority firms?

A10: This is not a State solicitation (please see response to question 7). It is the responsibility of any firm selected for retainer to meet the applicable MWBE goals for contracts awarded under this solicitation. ESD also reserves the right to require firms selected as pre-qualified counsel to work as co-counsel on specific transactions or matters with other firms and allocate work in a manner that ensures that MWBE law firms are assigned to substantive tasks and receive appropriate credit and compensation for the services they provide. Law firms must document good faith efforts to provide meaningful participation by MWBE law firms as co-counsel in the legal services performed.

Q11: Is there any additional detail in the Contract Reporter listing, than on the ESD website, that defines how one would qualify in certain areas. For example, 1) demonstrate work done on projects in NYC or NYS; 2) demonstrate work done on projects with a dollar value over a certain amount say $100-$500 or projects up to $1 million, etc.

A11: With the exception of the link to Q&A, the information on the Contract Reporter and on our website is exactly the same. Though the RFP does not give specific information about what qualifications are necessary for each practice area, we encourage each proposer to provide as much information about their experience in a particular practice area, representative transactions, the firm's role with respect to each such transaction and any other information as the firm feels is relevant to consideration of its proposal, consistent with the page limitations established in the RFP.

Q12. Can we bid rates higher than your current maximum and still be seriously considered?
Your RFP states: "In certain cases where private third parties have agreed to reimburse ESD's legal fees, retained firms may be compensated at higher rates than set forth above." Our question in this regard is the following: If our proposal includes higher rates than "maximum rates paid by ESD," with the acknowledgement that these higher rates would necessitate "private third parties" being involved in all or in a large proportion of the projects you would use us on, would that allow us to be considered for this pre-qualification?

A12: No. Eligible firms must agree to work within ESD's rate structure, which generally provides for capped hourly rates. While the rate structure also provides an exception in certain instances in which a private third party has agreed to fund ESD expenses, including legal fees at a higher rate, ESD will not list firms that restrict themselves to retention exclusively under these special circumstances.

Q13. If our proposal includes higher rates but we obtain or are given an MWBE partner with whom our blended rates would be equal to or less than the rates in the RFP, would that enable us to qualify?

A13: No. ESD's maximum rate policy does provide for the possibility of a blended hourly rate for attorneys within the same firm having differing levels of experience, provided that the maximum rate of $400/hr is not exceeded. However, ESD will not consider a blended rate between firms providing co-counsel.

Q14. I have been conducting business as a sole proprietorship but have been considering forming, at some point in the future, a professional limited liability company. I would like to know whether any approval for the sole proprietorship that is in operation at the time that the application is submitted would apply to and cover the professional limited liability company (having the very same ownership as the sole proprietorship) that might, at some point in the future, albeit after the approval process is completed, be formed.

A14: As long as ownership structure and the practice remains the same, any pre-qualification of a sole practitioner would not be affected by a change of business form to an LLC.

Q15. With respect to the Tab 1 page limit of 12 pages: If responding to all 9 areas of law identified in the scope of services, should nine separate proposals be submitted in order to meet the 12 page limit for Tab 1?

A15: No. Firms should submit a single response. As stated in response to question 1, although brevity is strongly encouraged, in the event that a firm is applying to multiple practice areas and may require more than the 12 page limitation to effectively respond, ESD will accept up to no more than 25 pages under tab 1.

Q16. Kindly advise whether ESD will give any flexibility with respect to the fee limitations listed in the RFP.

A16: ESD's rate policy provides a measure of flexibility with respect to the fee limitation in that it permits ESD, in its discretion, to compensate firms at a blended rate for attorneys, regardless of years out of law school or partner status, up to the maximum rate of $400/hr. In addition, as stated in the RFP, in certain cases where private third parties have agreed to reimburse ESD's expenses including legal fees, retained firms may be compensated at higher rates. Please also see the responses to questions 12 & 13.